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C O N F I D E N T I A L SECTION 01 OF 02 TEGUCIGALPA 001843

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SUBJECT: SHIPPERS HIKE HONDURAN PORT FEES, SPURRING
ALLEGATIONS OF CARTELIZATION

REF: TEGUCIGALPA 1825 AND PREVIOUS

Classified By: Classified By: Economic Chief Patrick Dunn for reasons 1
.4 (b) and (d)

1. (C) On August 26, the private shippers' umbrella organization -- the Central America Discussion Agreement (CADA) -- informed Honduran importers and exporters that effective September 1, shippers would raise container handling fees by USD 5-15 per container. According to CADA, this price increase is to offset the additional administrative costs associated with the new GOH-imposed non-intrusive inspection (NII -- gamma-ray scanning) regime. The Honduran private sector is livid, and calls this raise "the straw that broke the camel's back." They allege this is merely the latest in a series of price-fixing decisions by CADA, and they intend to test the waters for launching an anti-trust lawsuit in a U.S. court. What makes this case more than the usual private sector maneuvering for position is private comments to EconChief by the Minister of Finance William Chong Wong that he, too, believes the shippers are acting as a cartel and are in fact price gouging.

2. (C) CADA is a group of shipping companies active in Honduras that reportedly meets periodically in Coral Springs, Florida, to discuss and agree upon prices and fees. The group is composed of leading companies including APL, Crowley Liner Services, Dole Ocean Cargo Express, Great White Fleet, Maersk Sealand, King Ocean, and Seaboard Marine. In addition to a letter documenting the fee increase for NII, Post also has copies of letters documenting a general fee increase for container handling, and has been informed by the private sector that historically all such price increases are issued jointly by the CADA, from their Florida office.

3. (SBU) Econ Chief has discussed this issue over the last several days with President of the Honduran Industrialists Association (ANDI) Adolfo Facusse, President of the Tegucigalpa Chamber of Commerce Amilcar Bulnes, Executive Director of the Honduran Private Enterprise Council (COHEP) Benjamin Bogran, President of the Cortes Chamber of Commerce Oscar Galleano and Executive Director Raul Reina. All are "fed up" with the shippers' behavior, and all alleged at one time or another during our discussions that the shippers were acting as "a cartel" or were illegally conspiring to set prices. In addition to the letters, which they consider prima facie evidence of collusion, the businessmen point out that shipping a container from the Gulf Coast of the U.S. to Honduras is more expensive than shipping one from Los Angeles to Hong Kong. Even accounting for economies of scale, volume discounts and the like, they say, such prices can only be explained by price gouging on the part of the shippers.

4. (SBU) Three of these private sector groups -- ANDI, the Tegucigalpa Chamber, and COHEP -- have formally requested information on whether and how they could file a case in the U.S. alleging violation of Taft-Hartley anti-trust laws, basing their claim of U.S. jurisdiction on the fact that the coordination meetings take place in Florida. The group pointed out that when a similar challenge was filed in Costa Rica, CADA dropped its rates there significantly. Such a case has not been filed in Honduras because until August 2005 no anti-trust legislation existed under which to charge the shippers. That legislation has now been approved by Congress but is not expected to enter into force until late 2006, leaving a suit in the U.S. as the private sector's only recourse.

5. (SBU) No U.S. firm has approached Post directly about this matter, but Post notes that there are an estimated 170 U.S.-owned light industrial manufacturers (maquilas) in Honduras that are dependent on containerized sea-freight services for both import of production inputs and export of finished goods. Post also notes that approximately 75 percent of all container traffic that transits Puerto Cortes -- Honduras' largest port -- is destined for the U.S. While these allegations have been presented by the Honduran private sector, there is clear U.S. economic interest in determining

if price collusion or cartelization is happening.

The scanning fees issue

16. (C) In the most recent case, CADA determined that as a group it would raise fees passed on to importers for gamma-ray scanning to USD 20 across the board. As Post reported previously (ref a), these fees were arduously negotiated between the GOH and the private sector, with the result that full containers imported for domestic consumption would be charged USD 15 for scanning, while full containers laden with inputs for re-export (such as fabric for apparel assembly operations) would be charged only USD 5. CADA has unilaterally raised that formerly differential fee to a flat rate of USD 20, imposing a 35 to 300 percent increase for "administrative overhead." According to Galleano, whose Chamber includes a number of shippers as members, this is not a real fee, but rather a signal from the shippers that they do not want responsibility for administering the fee at all. The shippers claim that knowing which kind of import is which is too complicated and expensive, and should be the responsibility of the national port company, ENP.

17. (SBU) EconChief spoke with Mohand Merzkani, Senior Financial Advisor for Puerto Cortes, who explained that ENP could not undertake such a responsibility. First, he pointed out, ENP has relationships with the shippers, not with the individual importers. Second, the shippers must manifest and bill for each container anyway, and so are the logical choice to undertake the task of billing for scanning as well. Third, he said, the administrative burden of being in contact with hundreds or thousands of importers would be too much for ENP to handle. Finally, he said, who would the ENP bill in the case of empty containers, which must also be scanned and paid for, since in that case there is no importer, only the shipping company itself.

18. (C) The private sector seems unanimous in its position that the shippers should not be given the responsibility for billing for the inspection fee. According to Bulnes, the private sector has been through this before, with port security fees. In the case of port security fees, a surcharge of USD 40 was to be charged for physical infrastructure upgrades to Puerto Cortes. Following several rounds of negotiations between the private sector and the GOH, that fee was reduced by the GOH to USD 16 per container, and the shippers were given responsibility for collecting it. The shippers immediately added USD 4 to the fee for "administrative costs." That fee is still in place, and would be charged in addition to the scanning fee, leading, in the case of a maquila importer, to per-container surcharges of USD 21 for security and scanning, plus USD 19 in fees for "administrative overhead" on the part of the shipping company. The private sector finds this excessive, and complains that with every such fee Honduras loses competitiveness versus other CAFTA countries.

19. (C) Time is running out, as the fees were set to be charged effective September 1, 2005. On that date, the scanning contractor, CAMOSA, was to begin scanning operations. Those operations would be billed to the Ministry of Treasury at USD 37 per full container and USD 17 per empty container. The lower costs passed on to the private sector reflect GOH subsidies for the fees, based on the cost recovery that is expected as a result of improved customs collections as scanning reveals under-invoicing and other forms of customs evasion. According to Bogran, those fees have been suspended pending resolution of this dispute. Shippers, the ENP, and the private sector met in a series of discussions August 29-31 to address this problem, but without apparent success.

110. (C) Comment: Post is following this issue with interest, and would welcome any insights the Department can provide as to the applicability of U.S. anti-trust legislation to the instant case and any advice as to Post's role in such a process. End comment.

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